Reading File

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

James Kenna
Field Manager
Bureau of Land Management
Palm Springs - South Coast Field Office
P.O. Box 1260
North Palm Springs, CA 92258-1260

JAN 6 2000

Dear Mr. Kenna:

The U.S. Environmental Protection Agency (EPA) has reviewed the May, 1999, Draft Environmental Impact Statement (DEIS) and November, 1999, Supplemental to the Draft Environmental Impact Statement (DSEIS) for the **Soledad Canyon Sand and Gravel Mining Project, Los Angeles County, California.** Our review and comments on this DEIS are provided pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality's NEPA Implementation Regulations at 40 CFR 1500-1508, and Clean Air Act Section 309.

The DEIS/DSEIS analyzes alternatives for Transit Mixed Concrete Company (TMC) to mine and produce sand and gravel resources in Soledad Canyon over a 20-year period. The project site is on split estate lands where the minerals are federally owned and administered by the BLM and the surface is privately owned. Approximately 83 million tons of material would be mined to produce 56 million tons of sand and gravel, also known as Portland cement concrete sand and gravel. The proposed project would include a concrete batch plant to produce and deliver ready-mixed concrete to local markets. Alternatives to the proposed action include No Action, Reduced North Fines Storage Area, Offsite Batch Plant Location, Reclaimed Water Use, Railroad Transportation, and Alternative North Fines Storage Area.

Based on public comments and EPA input on the DEIS originally published last May, BLM decided to identify in a DSEIS its preferred alternative, different from TMC's proposal identified in the May DEIS as the proposed alternative. The DSEIS provides additional information on the agency's preferred alternative, which is the Reduced North Fines Storage Area Alternative with a conveyor belt system for transporting fines material. We commend BLM on its decision to publish this DSEIS and identify a preferred alternative which it appears would result in significantly less impact than TMC's original proposal, especially to air quality. The potential impacts of the originally proposed and preferred alternatives remain unclear, however, because of questionable assumptions made in the air quality modeling and uncertainties with respect to conformity with the State Implementation Plan (SIP).

We have rated this DEIS/DSEIS as EO-2 -- Environmental Objections-Insufficient Information (see the enclosed "Summary of Rating Definitions and Follow-Up Action"). Our objections are based on uncertainties regarding the project's potential impacts to air quality and conformity with the SIP. We also have concerns regarding the project's potential impacts to aquatic resources and water quality, including waters of the U.S., and uncertainties regarding the adequacy of the reclamation bond. We recommend that the Final Environmental Impact Statement (FEIS) provide additional information regarding air quality modeling and SIP conformity, water quality, compliance with Clean Water Act Section 404, facilities design, mitigation measures and best management practices, financial assurance, blasting, and environmental justice. Information on conformity is necessary because BLM cannot sign a Record of Decision until project conformity has been demonstrated. The FEIS should also describe in detail the design of the proposed conveyor system, its potential impacts, and necessary mitigation measures.

In addition, we are concerned that this mining and production EIS may have been influenced by the previous EA for sale of the mineral estate which, without evaluating the impacts of the overall project, appears to have compromised BLM's decisionmaking authority, leaving the agency with fewer options on production of the mineral estate. We recommend that, in the future, BLM analyze in one NEPA document the full scope of potential impacts involved in the decision to proceed with a mineral sale or lease, including the mining and production of the mineral estate. Our detailed comments are enclosed.

We appreciate the opportunity to review this DEIS/DSEIS and would be happy to continue to work with you and your staff to address our issues in the FEIS. We also respectfully request a copy of the FEIS be sent to this address when it is officially filed with our Washington, D.C., office. If you have any questions, please call me at (415) 744-1566, or Jeanne Geselbracht at (415) 744-1576.

Sincerely,

Deanna M. Wieman, Deputy Director
Cross-Media Division

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Enclosures

cc: Daryl Koutnik, County of Los Angeles, Department of Regional Planning
Esther Feldman, Chairman, Regional Planning Commission
Elizabeth Erickson, Regional Water Quality Control Board - Los Angeles Region
Connie Day, South Coast Air Quality Management District
Jack Mills, BLM-Sacramento

General Comments

The DEIS/DSEIS analyzes alternatives for a sand and gravel sale which BLM approved in a 1989 environmental assessment (EA). In issuing the FONSI, the BLM also committed to analyze the impacts of the project operations (under a Mining and Reclamation Plan) at a later date. EPA disagrees with BLM's practice of assessing mineral sales in an EA and then later evaluating the impacts of the sale's logical consequences in a subsequent EA or EIS. The Soledad Sale EA did not analyze a No Action alternative; nor did it thoroughly analyze the potential impacts of mining and production at the site. For example, potential impacts to air quality were not analyzed in the EA despite the fact that the project is in a non-attainment area for PM10 (particulate matter smaller than 10 ug/m^3), carbon monoxide, ozone, and nitrogen dioxide. Furthermore, the EA indicated that the proposed sale was not within a 100-year flood plain and, therefore, did not analyze the potential impacts of mining on the flood plain of the Santa Clara River. However, the proposed project being analyzed in the DEIS/DSEIS does involve actions near the flood plain and potentially could affect it.

Clearly, the sale decision and the mine production decision meet the definition of connected actions [40 CFR 1508.25(a)(1)]. "Connected actions" and "similar actions," both of which appear to be relevant to the scope of mineral sale NEPA documents, are defined in CEQ's NEPA Implementation Regulations. In accordance with 40 CFR 1508.25(a)(1), connected actions should be discussed in the *same impact statement*. Actions are connected if they: (i) automatically trigger other actions which may require environmental impact statements, (ii) cannot or will not proceed unless other actions are taken previously or simultaneously, or (iii) are interdependent parts of a larger action and depend on the larger action for their justification. In addition, agencies should analyze in a *single EIS* similar actions which, when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. [1508.25(a)(3)].

Based on both these definitions, it is clear that BLM should have analyzed, in one NEPA document, the full scope of potential impacts resulting from its decision to proceed with a mineral sale, including the mining and production of the mineral estate. EPA believes that this mining/production EIS is prejudiced by the previous EA for sale of the estate, compromising BLM's decisionmaking authority and leaving the agency with fewer unencumbered options on the mineral estate. BLM's piecemealing of these actions conflicts with the intent of NEPA.

According to the Soledad Sale EA, the proposed sale was the result of a court order for settlement of a trespass. Although the EA did not specify what alternatives were required by the settlement, it assessed one alternative for two mineral material sales, each with a total of 100 million tons of material. In the EA, therefore, the proposed action encompassed a range

of production from 20 to 200 million tons. Because the EA analyzed only one alternative ranging from 20 million to 200 million tons of material, a true analysis of the differences between alternatives falling within that range (a reasonable range of alternatives) was never conducted. With a more thorough analysis, it is unlikely that the sale of 200 million tons of material over a 20-year period could have been found to have no significant impact. In 1990, however, BLM issued TMC Federal contracts specifically to produce 56.1 million tons of PCC aggregate which would guarantee $28 million in royalties to the Federal Government. It is unclear how these specifications were developed when they were not available a few months earlier during the EA process. The DEIS, based on these unaccountable objectives, now states that the Reduced Quantity Mining Concept Alternative would not meet the requirements of the Federal Contracts objectives for the quantity of material to be mined (p. 2-58). More specific alternatives, such as the proposed alternative, the preferred alternative and the Reduced Quantity Mining Concept Alternative should have been evaluated in a single mineral sale/mining and production NEPA document.

We strongly recommend that, for future mineral sales and leases, BLM conduct thorough NEPA evaluations so as not to lock itself out of reasonable alternatives, mitigation measures, and even no action before the full impact of the project is known. Before conducting a mineral sale, we believe that BLM must rigorously explore and objectively evaluate in one NEPA document all of the alternatives for sale, exploration, and production; thoroughly discuss the impacts of each alternative; and discuss means to mitigate adverse environmental impacts. If the NEPA document reveals adverse significant impacts, BLM would then have several options *before* deciding whether to proceed with the sale. At this point, BLM would still have the option to, among other things, delete certain areas from the sale; include specific necessary mitigation measures (discovered during investigation) as provisions of the sale; specify exploration and/or production actions that would be prohibited; and select no action.

Alternatives

The FEIS should describe in detail the design of the conveyor system proposed in the DSEIS, and discuss its potential impacts and necessary mitigation measures.

EPA supports the use of reclaimed water for project operations if a source becomes available. We recommend that BLM and TMC commit to pursuing sources of reclaimed water as they become viable in the project area.

Air Quality

The DSEIS provides insufficient information regarding the project's potential effects on air quality, and we cannot determine what the preferred project's impacts would be, particularly with respect to National Ambient Air Quality Standards (NAAQS) and conformity. We

would object to the project if these uncertainties remain. We recommend, therefore, that additional information be provided in the FEIS with respect to both air quality modeling and project conformity.

Air Modeling

EPA has reviewed the revised air quality modeling information provided in the DSEIS, Appendix B "Air Quality Modeling Results," West Coast Environmental, 11/17/99. EPA does not know what the project impacts would be because of several questionable assumptions made in the air quality modeling. The following issues should be addressed in the FEIS in order to determine the potential impacts of the preferred project with respect to NAAQS.

Section 3.1. Model. The model runs in Appendix D of the "Air Quality Modeling Results" (within Appendix B of the DEIS) show that the project location was assumed to be urban, which is questionable given the rural setting; this would tend to lower modeled concentrations (since urban dispersion in the model is larger). More importantly, the area was modeled as flat terrain, which is clearly inappropriate given the complex terrain nearby. This, too, would tend to lower modeled concentrations, possibly by a large amount.

Section 3.2.2. Plume Rise. It is unclear why calculations of plume rise from point sources with stacks should be applicable to the volume sources (rock plant and batch plant); their initial height and dispersion should be based on some characteristic of the volume sources themselves and the amount of turbulent mixing near them.

Section 3.4. Meteorological Data. There is no indication of whether Lancaster or Newhall (Santa Clarita) station meteorological data are representative of the project site. It is not clear why wind speeds within this canyon would be higher than at the meteorological stations, as assumed. Even if they are, however, that by itself does not guarantee higher concentrations, which also depend on atmospheric stability, wind speed-dependent emission rates, and wind direction relative to nearby terrain. Thus, it is unclear to what extent the model runs represent impacts from the project.

Section 3.5. Background Concentrations. It is unclear whether Santa Clarita monitoring data are representative of the project location. Especially for PM10, sources of which have rather localized impacts, monitors should be as site-specific as possible. Even relatively nearby monitors may not be representative. In any case, the claim that Santa Clarita concentrations are higher than at the project location is hard to evaluate without a comparison of the land uses at both the monitor and the project.

General Conformity

The DSEIS estimates that emissions of nitrogen oxides (NOx) and volatile organic compounds (VOC) will exceed the applicability limits as specified in 93.153 of the General Conformity Rule [incorporated by reference by South Coast Rule 1901 (64 FR 19916)]. Thus, NOx and VOC emissions from this project are subject to the conformity requirements in Section 93.158.

The DSEIS (pp. 2-26 to 2-27) includes an analysis on how the project's NOx and VOC emissions are consistent with the growth and emissions estimates used by the SCAQMD's emissions inventory and also states that the SCAQMD was consulted in the development of this analysis. According to the DSEIS, BLM is trying to show conformity under 93.158(a)(5)(i)(A) which allows projects to conform in ozone nonattainment areas with approved SIPs if "[t]he total of direct and indirect emissions from the action...is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all of the other emissions in the nonattainment (or maintenance) area, would not exceed the emissions budgets specified in the applicable SIP." We do not believe that this criterion has been satisfied yet because the SCAQMD and Southern California Association of Governments (SCAG) have not provided a determination and documentation as specified in 93.158(a)(5)(i)(A). The FEIS and final conformity determination should include the necessary documentation, so that a conformity determination can be made prior to a Record of Decision.

Water Resources

The DEIS (p. 3-342) states that no cumulative impact on surface water quality would occur from regulated mining operations. It is unclear, however, whether all drainage from the entire project site would be captured in the seven desilting/debris basins. The facilities design should ensure that contaminants such as dust palliatives, oil and grease, and total suspended solids (TSS) and total dissolved solids (TDS) from project surfaces drain only to the settling ponds.

We recommend that the settling ponds and all diversion channels be adequately designed to withstand at least a 100-year, 24-hour storm without breaching. We understand from discussions with BLM that TMC intends to design desilting/debris basins to a 50-year capital storm standard. The FEIS should describe this event, as well as the 100-year, 24-hour storm event and describe how basins and diversion channels would be designed.

In addition, to prevent unauthorized discharges to streams, the conveyor system used to transport material should be equipped with catchments to contain material that falls off of the belt. This should be included in the design and described and discussed in the FEIS.

Appendix B1 indicates that drainage, siltation, and erosion control plans have been developed but are not included in the document. Nor are they summarized in the DEIS/DSEIS. Pursuant to 40 CFR 1502.14(f), mitigation measures should be included in the EIS. Furthermore, according to the Council on Environmental Quality's 40 Questions, #19.b, all relevant, reasonable mitigation measures that could improve the project are to be identified. The FEIS should describe the specific best management practices in the Storm Water Pollution Protection Plan that would be used to prevent erosion and sedimentation.

The project involves 16.6 miles of unpaved roads (DEIS, Table 3.1.4-15), which could be coated with magnesium chloride to suppress dust. The Santa Clara River is impaired for chloride in the vicinity of the proposed project. The DEIS (pp. 3-115, 3-117), however, states that the project would not result in significant releases of chloride into the Santa Clara River. The FEIS should indicate how much of the dust palliative would be washed off into road shoulders, settling ponds, and debris basins where it would be expected to percolate into the groundwater and possibly overflow during extreme storm events. It is unclear why chloride would not be expected to migrate through the soil to below 25 feet (DEIS, p. 3-115). Was fate and transport modeling conducted? The FEIS should provide the justification for this statement. The FEIS should also identify other dust palliatives that could be applied instead of magnesium chloride should it exceed appropriate thresholds in surface or ground water, indicate what those thresholds would be, and discuss how this would be monitored.

Mitigation measure WR1 involves monitoring to be conducted on water resources and sensitive ecological habitats near the project site. The Habitat Protection Plan (DEIS, pp. F6-16, 17) contains action levels that would trigger adjustments to mining operations to reduce or avoid impacts to water resources and sensitive habitats, and the DEIS lists several adjustments that could be made. The FEIS should identify who would enforce the water mitigation measures described in the DEIS (pp. 3-70 and 3-71) and determine when specific measures are appropriate based on action thresholds.

Biological Resources

The U.S. Fish and Wildlife Service Biological Opinion includes a reasonable and prudent measure that BLM shall ensure TMC does not use herbicides which are toxic to unarmored threespine sticklebacks in proximity to waters of the Santa Clara River. The Habitat Protection Plan (DEIS, p. F6-19) states that a glyphosate-type herbicide would be sprayed onto giant reed stems/stumps during annual removal of that plant from the river. The FEIS should discuss the potential impacts of this type of herbicide on the unarmored threespine stickleback and other aquatic species in the Santa Clara River, and describe application procedures and schedules that would be required by BLM and the U.S. Forest Service in order to ensure against adverse impacts.

Waters of the U.S.

According to the DEIS (p. 3-212), three ephemeral drainages exist on the project site and may be waters of the U.S. The DEIS also states that two of the three drainages would be altered by the North Fines Storage Area and by Mining Cut 3 (p. 3-231). A jurisdictional analysis should be conducted to determine whether these are waters of the U.S. The FEIS should describe these waters, including acreages and channel lengths, habitat types, values, and functions of these waters. The FEIS should indicate where these drainages are with respect to the project activities, and discuss how they would be affected and how their channels would be diverted. If these drainages are waters of the U.S., a Clean Water Act Section 404 permit may be needed from the U.S. Army Corps of Engineers for the proposed activities.

BLM should contact the U.S. Army Corps of Engineers to determine if the proposed project requires a Section 404 permit under the Clean Water Act. Section 404 regulates the discharge of dredged or fill material into waters of the United States, including wetlands and other "special aquatic sites." If a permit is required, EPA will review the project for compliance with Federal Guidelines for Specification of Disposal Sites for Dredged or Fill Materials (40 CFR 230), promulgated pursuant to Section 404(b)(1) of the Clean Water Act ("404(b)(1) Guidelines"). Pursuant to 40 CFR 230, any permitted discharge into waters of the U.S. must be the least environmentally damaging practicable alternative available to achieve the project purpose. The FEIS should include an evaluation of the project alternatives in this context in order to demonstrate the project's compliance with the 404(b)(1) Guidelines. If, under the proposed project, dredged or fill material would be discharged into waters of the U.S., the FEIS should discuss alternatives to avoid those discharges.

If a discharge is permitted, the FEIS should discuss how potential impacts would be minimized and mitigated. This discussion should include: (a) acreage and habitat type of waters of the U.S. that would be created or restored; (b) water sources to maintain the mitigation area; (c) the revegetation plans including the numbers and age of each species to be planted; (d) maintenance and monitoring plans, including performance standards to determine mitigation success; (e) the size and location of mitigation zones; (f) the parties that would be ultimately responsible for the plan's success; and (g) contingency plans that would be enacted if the original plan fails. Mitigation should be implemented in advance of the impacts to avoid habitat losses due to the lag time between the occurrence of the impact and successful mitigation.

Reclamation

The DEIS (p. 2-45) describes how the performance/reclamation bond for the project was calculated. It is unclear whether the $1,400,000 calculated by BLM or the $1,144,308 calculated by the State would be adequate to reclaim the mine should it prematurely close for

any reason at any time before the end of phase one of the project. In addition, the first-year reclamation cost estimate appears to be based on first-year construction costs, not first year reclamation costs. Furthermore, phase one is presumably a five year duration, not one year. The DEIS does not describe the reclamation activities for the first year or phase one or specify costs for each activity. The FEIS should provide this information. The FEIS should also discuss whether the phase two, three, and four reclamation/performance bond would also be 20 percent of the total cumulative contract amount for each phase (i.e., up to $28 million) or some other amount, and whether this amount would be adequate to cover closure and reclamation costs should the mine prematurely close at any time during those phases.

The FEIS should also estimate the real projected costs of closure and reclamation so it is clear to the reader how the reclamation bond should be adjusted over the life of the project and whether the bond would be adequate should the project prematurely close at any point during the project life. The FEIS should demonstrate that the bond amount would be adequate to cover closure and reclamation costs of a third party contractor, rather than TMC, performing the work. The FEIS should discuss the procedure for adjusting the bond as contract amounts and reclamation costs vary over the life of the project. EPA recommends that, at the beginning of each bond adjustment phase, BLM and/or the State secure the bond in an amount adequate to fund closure and reclamation at that phase, including coverage for facilities even if they are not intended for closure during that phase. This would ensure that enough money would be available to cover premature closure.

Blasting

The FEIS should discuss whether Soledad Canyon Road or the Southern Pacific Railroad would need to be temporarily closed during blasting. If so, the FEIS should evaluate the impacts of road closures to transportation, economics, and public health and safety, including the potential impacts on emergency vehicles.

Environmental Justice

The DEIS indicates that the census tract used for the environmental justice analysis for this project is approximately 30 square miles. It is unclear from the DEIS whether any neighborhood in proximity of the project site constitutes an environmental justice community. The FEIS should describe the neighborhoods near the project site. If any of these areas constitutes an environmental justice community, the FEIS should analyze the potential impacts and any necessary mitigation measures.

NEPA/CEQA

We understand that BLM attempted to coordinate with Los Angeles County in order to combine this DEIS with the County's Draft Environmental Impact Report (DEIR), prepared pursuant to the California Environmental Quality Act (CEQA). We believe it is unfortunate that the DEIS and DEIR were not written and released for public review as one document. EPA strongly recommends that, in the future, federal projects in California which require both NEPA and CEQA compliance be analyzed under one document so as to eliminate confusion, duplication, and inconsistencies.